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IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM—1978

No. 78-205

GIFT WRAPPINGS & TYINGS ASSOCIATION,
Petitioner,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

## PETITIONER'S REPLY TO RESPONDENTS' MEMORANDUM IN OPPOSITION

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The memorandum in behalf of the Government in opposition to the petition for certiorari apparently urges denial of the petition on two grounds: (a) The case is too trivial to decide and (b) the issue should be left for decision in a later case now wending its way through the corridors at the I.C.C. In support of this position the Government relies on several new arguments:

1. In I.C.C. Docket 36817 there is pending an investigation of "new tariffs reflecting another increase on the same goods," in which "petitioner has repeated and elaborated on its Fourth Section arguments." (Government memorandum, p. 2). Therefore "there is no reason for the Court to review the Fourth Sec-

tion question on the present record" because the "Fourth Section issues are being explored by petitioner and the eastern railroads in the pending Commission proceeding dealing with new rates on the same paper goods." (id., p. 3).

This is material *dehors* the record herein and is therefore tendered the Court improperly. Worse, it misleads. In Docket 36817 the railroads cancelled Uniform Classification Rule No. 24 within Official Territory[1] but failed to cancel Rule 24 as to all interterritorial shipments from and to points in Official Territory. Rule 24 permits the transportation of a shipment in two rail cars without requiring the shipper to pay the full carload weight minimum for the trailing car. The result is an increase for the trailing car ranging from 68% to 75% within Official Territory, which does not apply for many interterritorial shipments.[2] As a result, the Fourth Section departures in Docket 36817 created enormous long haul-short haul differentials forbidden by the statute and petitioner documented its objections to these as such at pp. 118 through 122 of its brief to the Commission in Docket 36817. In the proceeding below the railroads proposed no cancellation of Rule 24. In short, Docket 36817 raises Fourth Section issues quite different both in magnitude and quality from those which the Commission ignored in its decision below in the instant case. It is therefore not true, as the Government reply brief implies, that "if the Commission should determine in the pending proceeding that the Fourth Section departures were not previously authorized," then "petitioner would be free to seek damages for any injury it has suffered by filing either an administrative complaint or a civil action." (Government reply brief, p. 3).

Furthermore the two-year statute of limitations on the "administrative complaint or civil action" provided by 49 U.S.C. §§8, 9 will begin to expire November 30, 1978, two years after

[1] On some paper articles.

[2] Docket 36817, GWTA brief, p. 8.



the date the increase in the instant proceeding became effective. (§16(3)(b) of the Interstate Commerce Act, 49 U.S.C. §16(3)(b)).

2. The Government suggests as a second reason why decision of the Fourth Section argument ought to be left for Docket 36817 the filing by the railroads in that docket of "precautionary applications for exceptions concerning the new rates on these paper goods" (Government reply brief, p. 2)—by which the Government appears to suggest that the railroads for the first time have filed an application for Fourth Section relief in Docket 36817, a procedural aspect missing from the instant proceeding. Again the Government has gone outside the record, and again it has misled. Exactly such an application was filed before the Commission in the record below, as the railroad respondents admitted in their reply to the shipper opening statement

> "Attached to respondents' opening statement of facts and argument filed herein was Fourth Section Application E.R. No. 3052 which sought relief from Fourth Section departures at Official Territory points which are intermediate to points in Southern Territory."[3]

In the record herein the Commission paid no addition to this application, neither granting nor denying it, and in essence paid no attention to the Fourth Section point raised. On the same procedural facts in Docket 36817, the Commission will certainly feel free to reach the same result if the Court of Appeals for the D.C. Circuit and this Court decline to rule that the Fourth Section must be enforced at the agency level.

3. The Government says that the Fourth Section "issue was not well developed on the present record" and that "by comparison" it has been elaborately developed in Docket 36817;

[3] Respondent reply to shipper opening statement, p. 9 (R.A., p. 155).

therefore it ought to be left for decision in the later proceeding.[4]

In a reply statement submitted by the shippers in the proceeding below, a total of 14 pages of material (R.A., pp. 80-89, 110-114) were devoted to a detailed analysis of Fourth Section law, and a detailed explanation of long and short haul mileage differentials to eight transportation markets, illustrative of the pattern of Fourth Section departures created by the rail rate increase under review. The question was carefully and elaborately briefed to the Commission below and there is no reason why the Commission order in Docket 36817, the later case cited by the government *dehors* the record, will differ in the slightest from the Commission's order herein under review, absent appropriate instructions from this Court.

The Government suggests that the shipper argument below concerning the Fourth Section was so casual, brief and insubstantial that the Commission was justified when it "made no explicit finding on the issue, but * * * stated that arguments not discussed were found to be without merit (Pet. App. A-13)." (Government reply brief, p. 2). The best way to answer the Government suggestion that the shipper Fourth Section argument herein is too trivial to warrant remark either from the administrative agency or the reviewing courts is to attach that argument to this reply brief physically, and accordingly pp. 110-114 and 080-089 from the record on appeal to the Court of Appeals below are attached hereto as an appendix.

It is quite true that the railroads failed to "elaborate" a Fourth Section defense in the proceeding below. However, that failure in no way distinguishes the proceeding below from Docket 36817, because in the later case the railroads continued to ignore the Fourth Section—to such an extent that the Commission's hearing officer had to order them to file a

[4] This argument conflicts squarely with the Government's accusation of triviality. If the case is trivial, why should the Fourth Section question raised need "development"?



posthearing statement of their defense in re the Fourth Section. (Docket 36817 transcript, pp. 850-854). In other words, so far as the railroads are concerned, the case below and Docket 36817 are in *pari materia*; in neither do the railroads propose seriously to seek or justify Fourth Section relief. In Docket 36817 counsel for the railroads suggested to the Hearing Officer that no attention need be paid the Fourth Section because the Commission "disregarded" it in the proceeding below, and the Court of Appeals affirmed this without opinion. (Docket 36817 transcript, p. 666).

## CONCLUSION

For the foregoing reasons, the Government's suggestions should be rejected herein that (1) petitioner's Fourth Section argument is too trivial to warrant attention, (2) that this argument was never properly presented to the agency below, and (3) that the Fourth Section issues in a subsequent I.C.C. case, Docket 36817, not part of the record on appeal, are the same as those which the Commission refused to decide herein, and should therefore be allowed to govern the outcome herein. A writ of certiorari should issue.

Respectfully submitted,

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# APPENDIX

[080*] [Excerpts from the Record on Appeal]

## ARGUMENT

### I. Fourth Section Violations

To the accusation that the assailed rates violate the Fourth Section and that Fourth Section relief should not be granted, the railroads at p. 4 of **[081]** their opening statement make the following replies:

1. "The proposed rates will only increase somewhat the Fourth Section departures which already exist." A tripling of linear market proportion market over the routes affected where short haul shippers and receivers will be disadvantaged is more than "somewhat." The railroads are hardly in a position to invoke the maxim *de minimis non curat lex*.

2. "The existing departures * * * result from the different rate levels in Official and Southern Territory." Agreed. This is merely to say that Fourth Section departures exist; it does not justify them.

3. "The existing departures * * * recognized the varying conditions, including the revenue needs of the carriers, in the different territories." Undefined "varying conditions" and unquantified "revenue needs" cannot constitute a special case justifying violation of Section 4. Furthermore, whatever conditions there are that now "vary" and whatever "need" the respondents may have for "revenue" that is satisfied by Fourth Section departures penalizing only 8.2% of the transportation market, the application they have filed and the evidence accompanying it certainly do not demonstrate that these "conditions" and this "need" justify expansion of this penalty to 24.5% of their market.

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* Numbers appearing in brackets in text indicate page numbers of original record.

4. "These varying conditions have been recognized as constituting a special case justifying Fourth Section relief. *Class Rates At Points East of Rocky Mountains,* 308 I.C.C. 293 (1959); *Iron and Steel Within and To The Southwest,* 302 I.C.C. 329 (1957)." These precedents which respondents cite do not document their proposition and do not justify the relief sought.

**[082]** The railroad Fourth Section application in this proceeding seeks to increase intermediate rates to exacerbate old and create new short haul discriminations. In this situation the critical question becomes a justification for the escalated short haul rate level in terms not only of profitability but also of adequate excuse or reason for discriminating against the short haul shipper. Both of the cases which the railroads cite, *Iron and Steel Within and To The Southwest,* 302 I.C.C. 329 (No. 31865, Div. 2, 1957), and *Class Rates At Points East of Rocky Mountains,* 308 I.C.C. 293 (FSA 30891, Div. 2, 1959) decided Fourth Section applications which sought relief not in order to increase intermediate rates, but instead to decrease long haul rates for competitive reasons. Therefore in each of these proceedings the petitioning railroads had the benefit of a presumption that the existing intermediate rates were at a proper level, and the case turned on their success in establishing need for the long haul reductions which they sought to publish. In *Iron and Steel* the railroads had used a rate scale prior to 1953 applicable to movements of steel to the Southwest at the Class 32.5 level with a Docket 13535 mileage curve which was relatively high for the short haul and relatively low for the long haul. In 1953 the Commission prescribed an adjustment of this scale reducing it to Class 30, but using Docket 28300 mileages, the effect of which was to reduce short haul rates and somewhat to increase long haul rates, to the disadvantage of Eastern steel mills attempting to reach the Southwestern market (302 I.C.C. at 333, 338). The railroads began to encounter very heavy competition from contract truckers and from private highway carriage for short haul steel traffic to Southwestern destinations, among other



reasons, because of the development of producing points in or near the Southwest. Therefore on September 14, 1955 they modified the steel scale further to the Southwest **[083]** with reductions which ranged from 52.6% at 20 miles and 28.6% at 100 miles to 13.8% at 1200 miles. (302 I.C.C. at 335). They excluded from this adjustment, however, some short haul traffic lanes where, apparently, they did not encounter competition from contract truckers or private carriage warranting the reduction (302 I.C.C. at 339, 341), and the result was a series of Fourth Section departures in 9 transportation markets (6 destination departures and 3 origin departures) which the Commission carefully detailed in 302 I.C.C. at 340-341. The railroads justified the reduction of the long haul rates creating these departures by overwhelming proof of private carrier, truck and barge competition (302 I.C.C. at 334-335) and by cost evidence, of which the Commission said, "evidence is convincing that the [assailed] rates are compensatory." In point of fact the railroads showed, for the long haul, car mile earnings averaging 38.95¢ and car mile expense averaging 26.65¢, i.e. a contribution ratio of 46%. (302 I.C.C. at 337). Finally the Commission found that the existing short haul rates in traffic lanes unaffected by the reduction (and which therefore constitute rates higher for the short than for the long haul) were already either depressed to meet truck or water competition, had been previously prescribed by the Commission, or were the result of Docket 28300 class groupings (302 I.C.C. at 334-335, 341). The Commission adopted the policy reflected by its statement concerning these existing short haul rates, "relief is required to avoid * * * a needless sacrifice of revenue." (302 I.C.C. at 342). In other words, in order to enable the railroads to obtain additional net earnings by attracting additional long haul traffic, the Commission permitted them to reduce their long haul rates and, in order to avoid cancellation of this economic gain, the Commission refrained from requiring them to install **[084]** similar reductions for the short haul between points where such reductions were not necessary in order to retain traffic. It is important to note that,

although long haul Eastern producers appeared in the case in opposition to the railroads, seeking still more drastic long haul reductions, no shipper interest in the proceeding objected to maintenance of the higher short haul rates or sought the reduction of the short haul rates.

*Class Rates at Points East of Rocky Mountains,* 308 I.C.C. 293, supra, likewise involved no shipper objectors asking for reduction of short haul rates—in fact in that case there were no protestants at all. Again the railroads were seeking permission not to increase rates but instead to reduce them. Prior Fourth Section relief had authorized higher intermediate exceptions rates up to the level of the applicable class rates for the long haul. In 1957 Section 4 was amended to permit reduction of long haul rates on a circuitous route (for example between origin point A and destination point B) in order to meet a competitive rate via a direct route between A and B, without reducing short haul rates on the circuitous route. In other words route circuitry became an exception to the Fourth Section's long and short haul clause. However, sometimes it is the circuitous and not the direct route which publishes a competitive reduction, and when the direct route seeks to meet this reduction, this statutory exception does not apply. Therefore the direct route, when seeking to meet competition via a circuitous route, must either reduce short haul rates to avoid Fourth Section departures, or seek Fourth Section relief. *Class Rates* was an application by all of the roads for blanket such relief so long as the higher intermediate did not exceed the applicable class rate. (308 I.C.C. at 295-296). The Commission noted that Fourth Section relief is granted only in a "special case," and **[085]** it itemized four such cases which had been recognized in the past:

1. Competition making the long haul reduction necessary,

2. Route circuitry, which in 1957 ceased to be a "special case" and became a statutory exception,

3. Protection of "recognized [rate] groups," and



4. Protection of weak lines, i.e. permission to weak lines to maintain higher intermediate rates on the ground that they could not afford to take the revenue loss resulting from reducing intermediate rates. (308 I.C.C. at 297).

*Class Rates* then held that the pending application presented a fifth category of "special case" warranting a grant of relief from the long and short haul clause, namely relief sought by a direct route where the circuitous route controls the price and is the "rate making route."

Thus these two precedents on which the railroads lean: (1) involved applications to reduce and not to increase rates, and (2) posed the roads with the problem of proving that competitive necessity compelled the reduction and that the resulting reduced level was compensatory. In the pending investigation the railroads seek to increase, not reduce rates, need to show immunity, not vulnerability to competition (lest the increases unnecessarily violate the Fourth Section), and must show not adequacy but instead moderation as characterizing their profits from the proposed rates.

It is not sufficient, when increasing intermediate rates, merely to show them as below a maximum reasonable level in order to justify a Fourth Section violation. As the Commission remarked in *Railway Material* **[086]** *To, From and Within the Southwest* 220 I.C.C. 740, 742, 744 (I. & S. 4241, Div. 4, 1937), even though an increased rate scale was "not in excess of a maximum reasonable basis," that fact "does not warrant our approval of the fourth-section departures which would be created," in other words increases of intermediate rates above the level of long haul rates. Although this ruling was reversed on further hearing (225 I.C.C. 315), the reversal was only because of a showing of tariff terms which eliminated the Fourth Section departure. To the same effect are *Clay, Concrete, or Shale Products,* 179 I.C.C. 39, 47, 55 (I. & S. 3521, Div. 4, 1931); *Brick from Jackson,* 178 I.C.C. 713 (I. & S. 3610, Div.

3, 1931); *Sash Doors and Blinds*, 161 I.C.C. 718 (I. & S. 3391, Div. 3, 1930); *Grain and Grain Products*, 147 I.C.C. 3, 4 (I. & S. 3083, Div. 3, 1928); *Coal From Southern Illinois*, 123 I.C.C. 125 (I. & S. 2807, Div. 3, 1927); and *Tanning Extract From Lynchburg*, 122 I.C.C. 647 (I. & S. 2728, Div. 3, 1927).

Thus the railroads have supplied in this record no evidence of adequate reason to discriminate against short haul producers and receivers as they propose in this proceeding by increasing the short haul rates—beyond attempting to prove that such increases meet the customary standard of reasonableness under the Rule of Ratemaking—a standard which by itself is inadequate to justify Fourth Section relief. (Otherwise the Fourth Section would be a nullity, and would always been satisfied whenever a rate increase was shown to be within the zone of reasonableness).

In lieu of adequate proof of a basis for creating the Fourth Section departures confessed by their Appendix B, the railroads contend that "these variances * * * were created by different Ex Parte general increases **[087]** for interterritorial and intraterritorial rates * * * [which] were authorized by the Commission at the time the general increase tariffs were filed." (Railroad Opening Statement, p. 5). In other words the railroads appear to say that the Commission has already issued an order granting Fourth Section relief authorizing the differentials of short haul rates over long haul rates created by the tariff under suspension. The railroads do not cite the text of any such order or supply its docket number for the very good reason, as protestants contend, that there is no such order.

There is no question that in the legislative scheme long and short haul rate disparities are prohibited except to the extent explicitly permitted by Commission order. Congress has recently reaffirmed this explicit and fundamental element of transportation law by providing in the Rail Revitalization Act, Public



Law 94-210, in § 15(8)(f)(1) that nothing in the new regulatory reform of Part I of the Interstate Commerce Act shall "modify the application of Section * * * 4 * * * in determining the lawfulness of any rate or practice." Two fundamental policies underlie the long and short haul clause of Section 4: (1) Prohibition of reduction of long haul rates for competitive reasons below a level where they make an adequate contribution to the transportation burden, and (2) Prohibition of disparities between long and short haul rates such as to prejudice patrons producing or receiving at the short haul points. While both elements of policy always apply in the grant of Fourth Section relief, the former tends to be more important when the carrier seeks to reduce the long haul rate for competitive reasons, holding the short haul rate at existing levels, and the latter consideration tends to become more important when the carriers seek to increase the short haul rates for revenue purposes, holding the long haul rates at existing levels.

**[088]** The railroads have no Fourth Section relief authorizing the Fourth Section departures herein involved such as are cited above in Tables 1 and 2. They cannot rely on Fourth Section orders in ex parte general increase proceedings as authority, because the standard language in such orders (as, for example, in the Commission's order of March 21, 1975 in Ex Parte 310, *Increased Freight Rates & Charges, 1975, Nationwide*) stipulates the limitation

> "that carriers * * * are hereby authorized to depart from the provisions of section 4 of the act *to the extent necessary to establish and maintain the increases in rates and charges authorized in the order in Ex Parte No. 310 of this date.*" (Emphasis supplied.)

It goes without saying that the "increases in rates and charges" involved in the assailed tariff schedule were not "authorized in the order in Ex Parte No. 310" or in any other ex parte order which the carriers can cite. It is fundamental that

> "Fourth-section orders granting relief are permissive, but if availed of the conditions under which they are granted may not be disregarded and should be fully complied with in the tariffs containing the rates to be protected." *Livestock-Western District Rates* 176 I.C.C. 1, 150 (No. 17000, 1931).

Furthermore,

> "In authorizing carriers to establish lower rates to more distant points than to intermediate points it is our duty to establish reasonable limitations upon the rates which may be applied at the intermediate points." *Aluminum Sulfate from Bastrop, La., to the South* 286 I.C.C. 277, 281 (FSA No. 24262, Div. 2, 1952).

The Commission has, in its ex parte general increase orders, "established reasonable limitations upon the rates which may be applied at the intermediate points" by limiting Fourth Section relief solely "to the extent **[089]** necessary to establish and maintain the increases in rates and charges authorized" in the ex parte proceedings. There is no question that no ex parte Fourth Section order has authorized the Fourth Section departures contemplated in the 10% increase in rates applicable to paper and paper articles herein under discussion.

Finally the railroads contend (Railroad Opening Statement, pp. 5-6) that the Commission found in a factually similar proceeding that no Fourth Section departures requiring Fourth Section relief were created by an increase of the 36,000 pound rate scale applicable to some paper articles. The railroads referred to *Sanitary Paper, Western Truckline Territory* 9 I.C.C. Supp. 367 (Commerce Law Services) (Rev. Bd. No. 4, 1975, I. & S. No. 8978). While, concededly, this decision found an increase in a 36,000 pound rate scale applicable to sanitary papers to be just and reasonable, it will be searched in vain for any grant of Fourth Section relief or any finding of a Fourth



Section violation. It is quite apparent that, to the extent Fourth Section violations existed in that proceeding, the Commission's attention was never invited to them. Consequently the case can hardly be considered authority for the proposition that the clear Fourth Section violations conceded by railroad Appendix B should be condoned. The suspension order in this case recited explicitly Fourth Section departures as the reason for suspension. The respondent railroads cannot possibly satisfy their burden of proof in this regard by citation of a precedent which does not even mention the existence of Section 4 in the Interstate Commerce Act.

* * * * * * * *

**[110]** The dimension of Fourth Section departures involved in the proposed increases is supplied by Appendix B attached to the Fourth Section application set out in Exhibit 4 to the carrier opening statement. Rail Appendix B lists the long haul (Official-Southern, interterritorial) rates applying to the subject paper articles in 8 illustrative markets over a range of rate base miles. In each of these 8 markets rail Appendix B also supplies the short haul rate levels in that market (the rates applicable within Official Territory) where Fourth Section violations exist presently and where they will exist under the proposed rates. Table 8 below rearranges the data from rail Appendix B and draws appropriate conclusions from it. For example, lines 3, 4 and 5 of Table 8 are derived from p. 2 of Rail Appendix B. Line 3, col. (c) lists the long haul market in which a present Fourth Section violation results from the fact of a higher short haul date for a shorter distance, i.e., presently the rate of 97¢ per cwt. for 320 miles is exceeded by the rate of 98¢ for 300 miles. Columns (f) and (e) indicate that the two rates are approximately the same (the short haul rate is only 1% greater than the long haul rate), but that the short haul distance is 93% of the long haul distance. Line 11 of Table 8 indicates the change in these relationships proposed under the new rate scale. The long haul market which becomes related to the same short haul market of 300 miles is a haul of 400 miles at a rate of $1.11

per cwt., and at the shorter distance of 300 **[111]** miles the higher rate of $1.12 applies. As indicated in Column (f) the short haul rate is approximately the same as the long haul rate (1% higher), but column (e) indicates that the short haul distance is only 75% of the long haul distance.

**TABLE 8**

**Transportation markets listed in rail Fourth Section application**

| | Short Haul | | Long Haul | | Ratio Short ÷ Long Haul | |
|---|---|---|---|---|---|---|
| | Miles | Rate | Miles | Rate | Miles | Rate |
| | (a) | (b) | (c) | (d) | (e) | (f) |
| | | | NOW | | | |
| 1. | 100 | 56 | 100 | 52 | 1.00 | 1.08 |
| 2. | 200 | 82 | 220 | 81 | .91 | 1.01 |
| 3. | 300 | 98 | 320 | 97 | .93 | 1.01 |
| 4. | 400 | 119 | 440 | 117 | .91 | 1.02 |
| 5. | 500 | 136 | 520 | 134 | .96 | 1.01 |
| 6. | 600 | 152 | 680 | 151 | .88 | 1.01 |
| 7. | 700 | 163 | 740 | 161 | .94 | 1.01 |
| 8. | 800 | 183 | 900 | 181 | .88 | 1.01 |
| | | | PROPOSED | | | |
| 9. | 100 | 70 | 180 | 68 | .56 | 1.03 |
| 10. | 200 | 94 | 300 | 91 | .66 | 1.03 |
| 11. | 300 | 112 | 400 | 111 | .75 | 1.01 |
| 12. | 400 | 131 | 500 | 125 | .80 | 1.05 |
| 13. | 500 | 152 | 680 | 151 | .74 | 1.01 |
| 14. | 600 | 166 | 760 | 164 | .79 | 1.01 |
| 15. | 700 | 179 | 850 | 171 | .83 | 1.05 |
| 16. | 800 | 204 | 1100 | 202 | .78 | 1.01 |



Table 9 relists the long haul mileages in column (c) of Table 8 in ascending order of magnitude.[1] These long haul miles represent the size, in terms of linear length of a transportation market where, as a result of a Fourth Section departure, a producer or a receiver at a shorter distance is placed at a competitive disadvantage because the rate he must pay exceeds **[112]** the rate which his competitor pays for transportation over the long haul from one end of the market to the other. Once the short haul rate exceeds the long haul rate level, one knows that any increase of the short haul distance will result in either the same or a higher short haul rate. Therefore this short haul competitive disadvantage persists over the remainder of the distance which separates the short from the long haul. Again to use an example the existing Fourth Section departure documented at line 3 of Table 8, the mileage of this long haul market is listed at line 5 of Table 9, and the distance which separates the prejudiced short haul (300 miles) from the preferred long haul (320 miles) is a distance of 20 miles, over the full span of which the rate for the short haul will exceed the rate for the long haul. Therefore column (b) records that the number of linear miles in the long haul transportation market which are penalized by a higher short haul rate is 20 miles.

The change in relationship under the proposed rates reflected at line 11 of Table 8 is recorded on line 6 of Table 9 where column (a) lists the length of the transportation market as 400 miles and column (c) lists the span of this total market (100 miles) over which a producer or a receiver may be located whose short haul move in the market is penalized by a rate higher than that assessed for the long haul over the full span of the market. Column (b) of Table 9 collects the linear miles

[1] Although there are 16 lines in Table 8, Table 9 needs only 15 lines to duplicate this data, because, as noted at line 10 of Table 9, a long haul mileage of 680 miles is listed twice in column (c) of Table 8 at lines 6 and 13.

of market thus penalized under existing Fourth Section departures and column (c) collects the miles proposed to be penalized under the new rate structure.

[113] **TABLE 9**

**Market analyzed by mileage blocks**

| | Dimension of Transportation market in linear rate base miles | Linear Miles of penalized short haul in the market | |
|---|---|---|---|
| | | Now | Proposed |
| | (a) | (b) | (c) |
| 1. | 100 | | |
| 2. | 180 | | 80 |
| 3. | 220 | 20 | |
| 4. | 300 | | 100 |
| 5. | 320 | 20 | |
| 6. | 400 | | 100 |
| 7. | 440 | 40 | |
| 8. | 500 | | 100 |
| 9. | 520 | 20 | |
| 10. | 680 | 80 | 180 |
| 11. | 740 | 40 | |
| 12. | 760 | | 160 |
| 13. | 850 | | 150 |
| 14. | 900 | 100 | |
| 15. | 1100 | | 300 |

Table 10 sums up the conclusions which can be drawn from the foregoing figures. Line 2, column (b) of Table 10 is the total number of miles listed in column (c), lines 1 through 8 of Table 8, i.e., the total linear miles of market where rail Appendix B analyzes rail rate behavior in the 8 markets studied. Line 2, column (c) of Table 10 supplies the same information for the total miles under the proposed rate structure listed in column (c), lines 9 through 16 of Table 8. Line 3 of Table 10



is the total of penalized miles under the present rate structure from column (b) of Table 9 and under the proposed rate structure from column (c) of Table 9. Line 4 of Table 10 is the ratio of penalized miles in line 3 to total miles in line 2. Lines 5 and 6 supply averages for the 8 markets involved.

[114] **TABLE 10**

**Measurement of transportation market in terms of linear, rate-base miles**

| | Under existing 4th Section relief | Under 4th Section relief applied for |
|---|---|---|
| (a) | (b) | (c) |
| 1. Number of markets analyzed | 8 | 8 |
| 2. Total linear miles | 3920 | 4770 |
| 3. Penalized linear miles | 320 | 1170 |
| 4. Portion of total market penalized | 8.2% | 24.5% |
| 5. Average miles per market | 490 | 596 |
| 6. Average penalty miles per market | 61 | 75 |

At the present time the railroads claim to have Fourth Section relief justifying higher rates for the short haul applicable to or from points located over an average of 8.2% of the length of the routes involved. They are now asking for permission to increase these intermediate rates over short hauls sufficiently high as to extend the percentage of distance over their routes where the short haul producer or consumer is prejudiced from an average of 8.2% to an average of 24.5%. In other words they appear to want to triple the route proportions where their rates will be allowed to place the short haul shipper or receiver at a competitive disadvantage vis-a-vis his long haul rival.

* * * * * * *